

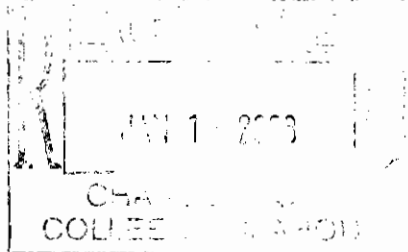
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MEMO ENDORSED



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BY FACSIMILE

January 18, 2008

The Honorable Colleen McMahon
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 640
New York, NY 10007

RE: *Software AG, Inc. v. Consist Software Solutions, Inc.* as
Case No. 08 CV 00389

Dear Judge McMahon:

We are in receipt of the letter sent today by Consist Software Solutions, Inc. and Natalio Fridman ("Defendants") to Your Honor. Defendants' willingness to stipulate to the removal of various misrepresentations on their web site addresses only a small, albeit important, part of Defendants' misrepresentations and other wrongful acts that required expedited relief. Defendants' offer entirely omits reference to all their other written and oral misrepresentations, often made directly to end-users, and that they can provide SAG Software Products Level 2 Support, Level 3 Support, System Maintenance Releases, New Software Releases, or New Software Versions.

Furthermore, our contract claims and claims of false statements are not limited to Consist's web publications, but include Consist's representations to customers orally, in person and in agreements in which Consist offers to provide post-expiration maintenance services. *Register.com, Inc. v. Domain Registry of America*, 2002 U.S. Dist. LEXIS 24795, at *43-44 (S.D.N.Y. Dec. 27, 2002) (Lanham Act § 43(a) misrepresentations include "informal type 'promotion', such as the *mailer*, emails, and telephone calls....").

If Defendants' position is that all issues in Plaintiffs' Order to Show Cause are moot except for conveying to SAG the trademarks that Consist wrongfully registered, Defendants should have no objection to this Court entering a preliminary injunction proposed in our Order to Show Cause with the exception of the trademark issues, *i.e.*, enjoining Defendants, their employees, their agents, their attorneys and all others acting in concert with them from:

(i) Representing or implying that Consist has continuing rights pursuant to the Agreement or that Defendants' rights under the Agreement may be or will be reinstated;

(ii) Offering or representing that Defendants can provide for SAG Software Products Level 2 Support, Level 3 Support, System Maintenance Releases; New Software Releases; or New Software Versions;

Asia
Pacific
Bangkok
Beijing
Hanoi
Ho Chi Minh City
Hong Kong
Jakarta
Kuala Lumpur
Manila
Melbourne
Shanghai
Singapore
Sydney
Taipei
Tokyo

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Middle East
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Amsterdam
Antwerp
Bahrain
Baku
Barcelona
Berlin
Bologna
Brussels
Budapest
Cairo
Cologne
Frankfurt / Main
Geneva
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Madrid
Milan
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Toronto
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1/28/2008
I have no intention of starting this letter writing thing all over again. We will have a hearing claim for injunctive relief on whatever issues to pursue. I will decide at the hearing if plaintiff is entitled to the relief sought.

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(iii) Representing, promoting, advertising, or implying that Plaintiffs have authorized or otherwise falsely designating that Plaintiffs have authorized Consist to provide maintenance services for SAG Software Products, including Level 2 Support, Level 3 Support, System Maintenance Releases; New Software Releases; or New Software Versions;

(iv) Asserting any rights in Software AG's SAG Software Products;

and ordering Defendants to:

(i) Include in any offers, advertisements, promotions or agreements to render to customers or potential customers maintenance services for SAG Software Products in type no less prominent in face and in size than the type in which offers or statements of service are made the disclaimer that "Software Ag Does Not Authorize Consist's Maintenance Services And In No Event Can Consist Provide Level 3 Support, Software Updates Or New Software Releases".

If Defendants, however, are not willing to stipulate to such a preliminary injunction, the hearing scheduled for next Thursday should proceed on all issues set forth in Plaintiffs' Order to Show Cause. Nor should Defendants use their letter as a basis for withholding discover pending Your Honor's ruling.

Very truly yours,



James David Jacobs

cc: Hyman Schaffer (By e-mail)

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Client/Matter No.	56142904-000002		
Re	<u>Software AG, Inc. v. Consist Computer Solutions 08 CV 00389</u>		
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